

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**TARA L GREGORY**  
Claimant

**DOREEN PFIESTER**  
Employer

**APPEAL NO. 20A-UI-03707-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/28/19**  
**Claimant: Respondent (1/R)**

Iowa Code Section 96.6(2) – Timeliness of Appeal  
Iowa Code Section 95.4(3) – Able & Available

**STATEMENT OF THE CASE:**

The employer filed a late appeal from the April 6, 2020, reference 05, decision that allowed benefits to the claimant, provided she was otherwise eligible, and that held the employer's account could be charged, based on the deputy's conclusion that the claimant was able to work, available for work, but partially unemployed. After due notice was issued, a hearing was held on May 22, 2020. Claimant Tara Gregory did not provide a telephone number for the hearing and did not participate. Doreen Pfiester represented the employer. The administrative law judge took official notice of the April 6, 2020, reference 05, decision and received Exhibit 1 into evidence.

**ISSUE:**

Whether there is good cause to treat the late appeal as a timely appeal.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On April 6, 2020, Iowa Workforce Development mailed the April 6, 2020, reference 05, decision to the employer at its last-known address of record. The decision allowed benefits to the claimant, provided she was otherwise eligible, and held the employer's account could be charged, based on the deputy's conclusion that the claimant was able to work, available for work, but partially unemployed. The decision stated that an appeal from the decision must be postmarked by April 16, 2020 or be received by the Appeal Section by that date. The employer's address of record is a United States Postal Service post office box in Reinbeck, Iowa. The weight of the evidence indicates the decision arrived at the post office box address of record in a timely manner, prior to the deadline for appeal. The employer has no information regarding when the decision landed in the post office box. The employer does not know how long the decision was in the post office box before the employer collected it from the post office box. The employer mailed an appeal from the decision. The appeal letter is undated and is written on the back of a copy of the April 6, 2020, decision. The envelope in which the appeal was mailed bears a May 1, 2020 postmark.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The ten-day deadline for appeal begins to run on the date Workforce Development mails the decision to the parties. The "decision date" found in the upper right-hand portion of the Agency representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

An appeal submitted by mail is deemed filed on the date it is mailed as shown by the postmark or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See Iowa Administrative Code rule 871-24.35(1)(a). See also *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An appeal submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See Iowa Administrative Code rule 871-24.35(1)(b).

The appeal in this matter was filed on May 1, 2020, which is the postmark date on the envelope in which the appeal was mailed.

The evidence in the record establishes that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did have a reasonable opportunity to file a timely appeal.

The evidence establishes an untimely appeal. The evidence indicates that the employer delayed collecting the correspondence from the employer's post office box and delayed filing an appeal until two weeks after the appeal deadline. Because the late filing of the appeal was attributable to the employer, and not attributable to Iowa Workforce Development or the United States Postal Service, there is not good cause to treat the late appeal as a timely appeal. See Iowa Administrative Code rule 871-24.35(2). Because the appeal was untimely, the administrative law judge lacks jurisdiction to disturb the April 6, 2020, reference 05, decision from which the employer has appealed in this matter. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Because the able and available determination, as well as the partial unemployment determination, involves a week-by-week determination, and because the employer filed its appeal during the week of April 26, 2020 through May 2, 2020, this matter will be remanded to the Benefits Bureau for adjudication of the able and available, partial unemployment, and employer liability issues for the period beginning April 26, 2020.

**DECISION:**

The employer's appeal from the April 6, 2020, reference 05, decision was untimely. The decision that allowed benefits to the claimant effective March 15, 2020, provided she was otherwise eligible, and that held the employer's account could be charged, based on the deputy's conclusion that the claimant was able to work, available for work, but partially unemployed, shall stand.

This matter is remanded to the Benefits Bureau for adjudication of the able and available, partial unemployment, and employer liability issues for the period beginning April 26, 2020.



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James E. Timberland  
Administrative Law Judge

May 29, 2020  
Decision Dated and Mailed

jet/scn